IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4383 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PATEL PRAGJIBHAI GOVINDBHAI

Versus

GOVERNMENT OF GUJARAT

Appearance:

1. Special Civil Application No. 4383 of 1994

MR JD AJMERA for Petitioner No. 1

MR HL JANI, AGP for Respondent No. 1-2

NOTICE SERVED for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 12/04/2004

ORAL JUDGEMENT

The petitioner purchased the land from respondent

No.3 on 10th Sept.1982 and since then he claims that he is in possession and is cultivating the same. The petitioner's case is that the Deputy Collector, Dhrangadhra issued notice for breach of the provisions of Bombay Prevention of Fragmentation Consolidation and Holdings Act, 1947. The said notice was issued to the petitioner after a period of nine years even though the entry was confirmed on 11th November 1982. The Deputy Collector by order dated 31st March 1993 set aside the transaction after a period of 11 years.

2.1 The petitioner carried the matter in revision, which also came to be dismissed by judgment and order dated 1st/8th February 1994.

2.2 The petitioner has raised two contentions, namely, that the notice is issued by the Deputy Collector on 31st March 1993, after a period of nine years of sale and after the confirmation of the sale by the competent authority and therefore, the powers exercised by the respondent No.2 is unreasonable and in view of the decision in the case of State of Gujarat v. Patel Raghav Natha and ors., reported in 1969 GLR 992, the reasonable period is one year.

3. In my opinion, the contention raised on behalf of the petitioner is required to be accepted. The order passed by the authority below is quite unreasonable and the same is required to be quashed and set aside.

4. Learned AGP Mr.H.L.Jani for the respondents Nos. 1 and 2 strongly contended that though the notice is issued after more than nine years, the petitioner is not entitled to claim possession of the land. The said contention though have some force, if it is against the public interest. In the present case, one corner of the petitioner's plot is touching the plot in question and the averments to that effect are made in paragraph 8 of the petition wherein the petitioner has categorically stated that the land in question is adjacent to the land of the petitioners.

5. In view of the above circumstances, the proceedings initiated by the respondents are required to be quashed and set aside more particularly when the land of the petitioner is touching the plot in question. The petition is allowed. Rule is made absolute. No order as to costs.

(K.S. Jhaveri, J.)
Sreeram.